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ABROAD AT HOME

Reagan's Law

By Anthony Lewis

BOSTON, Jan. 22 — In no other country is law remotely as important a strand in the social fabric. We live in a Madisonian system, our freedoms enforced by law. A disparate and fractious people, we have been held together by law. For us law has been both a liberating and a stabilizing force: both of those because on tense issues it has offered a hope of ordered change.

It is in terms of his contribution to that broad concept of law that an Attorney General of the United States must be judged. And it is in those terms that William French Smith will be rated by history as one of the weakest figures to hold the position: a man who saw law not as an enlarging vision of justice but as a narrow political instrument.

Mr. Smith's record is marked by three major endeavors. He undid what he could of his predecessors' achievements in civil rights enforcement. He helped in the most relentless and lawless campaign for government secrecy in American history. And he worked to create an imperial Presidency, unrestrained by the constitutional power of Congress.

A single episode in the civil rights field forever defined Mr. Smith as an Attorney General unwilling or unable to hold his President to established principles of law. That was the affair of tax exemptions for segregationist private schools.

In the Nixon Administration, in 1976, the Internal Revenue Service ruled that schools discriminating on racial grounds were not eligible for favored tax treatment. For more than a decade, under Administrations of both parties, the Justice Department defended that ruling in the courts.

But in January 1982, President Reagan's Justice and Treasury Departments announced that they had changed the position. It was a switch so devoid of support in the law that it was attacked by both Republicans and Democrats in Congress, and by many Justice Department lawyers.

President Reagan squirmed desperately to escape the political heat. He said he wanted Congress to prohibit the tax exemptions. He said he had not realized that there was a Supreme Court case pending — he thought "that the problem of segregated schools had been settled." Then the truth leaked out: He had ordered the change at the suggestion of a Mississippi Republican.

Through all this undignified mockery of the law William French Smith sat silent. When his Justice Department would not argue against the tax

exemptions, the Supreme Court appointed a private lawyer to do so — and barred the exemptions in an 8-to-1 decision.

One of Mr. Smith's first actions as Attorney General was to tell all Government agencies to be less generous in responding to Freedom of Information requests. Since then secrecy has been one of his main themes.

On the day his resignation became known, it was reported that his Justice Department had persuaded a Federal Court of Appeals to prohibit publication of a trial judge's opinion because it criticized department lawyers. It was a unique prior restraint: a perfect symbol of William French Smith's disregard for the tradition of American freedom.

Of the many Reagan secrecy measures, the broadest and most novel was the President's order of March 11, 1983, creating a lifetime censorship system for 127,500 persons cleared for sensitive national security information. The order was drafted by one of Mr. Smith's ideological appointees, Deputy Assistant Attorney General Richard K. Willard.

Legally speaking, the most astonishing thing about the March 11 order was its assumption that a President could so drastically change the American system on his own, without asking Congress for legislation. Censorship has been anathema in the United States from James Madison on, yet here was a President purporting to impose that hated concept without a shred of legislative authority. Congress, resisting, has postponed enforcement of the order until April 15.

The same disregard for the constitutional system of limited power, dividing authority among the three branches of government, was evident in Mr. Smith's attitude toward questions of war. He supported President Reagan's bold attempts to arrogate the war-making power to himself, in Lebanon and Central America.

A wise President wants a Minister of Justice in his Attorney General: a man of character, independent enough to tell him no when the law so counsels. William French Smith had no visible independence from his President. He came across in Washington as a society figure, without the intellectual strength that earns respect.

And now it seems we are to have Edwin Meese 3d, a man who is just as much a creature of Ronald Reagan's — and has just as narrow, rightist a view of the law. It was Ed Meese who in 1981 called the American Civil Liberties Union a "criminals' lobby." Will the Senate care about the continued demigration of a once great office?

US tightening access to information

First of three articles

By Ross Gelbspan
Globe Staff

The Reagan Administration, while denying it is pursuing any formal policy, has moved systematically over the last three years to restrict or cut off access to a wide range of traditionally public information.

The restrictions, unprecedented in peacetime, cover material ranging from unclassified scientific papers to information about the operation of government agencies to the writings of senior officials.

As a result, a growing number of bureaucrats, scientists, historians, journalists, government contractors, unions and public interest groups are running into newly erected barriers to gathering and disseminating information.

The Administration justifies many of its specific actions on national security grounds. It claims that the nation's security depends on stemming leaks of classified information and cutting down on the flow of technological and scientific information to the Soviet Union.

But many people affected by the new restrictions charge the Administration's actions threaten academic freedom, violate constitutional guarantees of free speech and freedom from self-incrimination and create an atmosphere of fear and intimidation among scholars, scientists and bureaucrats.

Some fear that ultimately the Administration's restrictions on information may impair the ability of society to engage in informed, timely debate about critical public policy questions.

Virtually all the restrictions have been accomplished by the executive branch - the White House, the Justice Department, the Pentagon and the National Security Council - without the approval of Congress. They include:

- Imposing lifetime censorship and the threat of random lie detector tests on about 130,000 bureaucrats and government contractors;
- Rewriting the rules governing classification of documents to permit more information to be kept secret;
- Permitting agencies to avoid scrutiny by obstructing the flow of previously available information under the Freedom of Information Act;
- Attempting, on at least nine occasions, to suppress publication or presentation of unclassified scientific papers;

• Requesting university officials to conduct covert surveillance of foreign visitors and to limit their activities.

• No White House or cabinet-level official has responded to charges that the Administration is pursuing a conscious policy of secrecy.

• Several members of Congress, in fact, have criticized the Administration for not providing such high-level policy makers as former National Security Adviser William Clark or Attorney General William French Smith to discuss Reagan's information policies.

• White House officials, including presidential adviser Edwin Meese III and White House communications director David Gergen, declined repeated requests for interviews on the subject. White House counsel Fred Fielding and National Security Director Robert MacFarlane did not return telephone calls.

• Through spokesmen in the Justice Dept. and other agencies, the Administration has generally defended its actions on the ground that it needs to stop leaks of classified information. Defense and intelligence officials also cite a need to clamp down on the flow of militarily valuable technology to the Soviet Union.

• The restrictions on the Freedom Of Information Act (FOIA), officials claim, are needed to counter a perception among foreign governments and informants in criminal investigations that the government cannot protect confidential information.

• But opponents charge the Administration has produced no evidence that disclosures under FOIA or leaks of sensitive information by bureaucrats have endangered the national security or compromised criminal investigations.

• On four occasions, congressmen have scheduled closed meetings with one such official to see evidence of threats to national security being used to justify some of the Administration's actions. To date, the meetings have not taken place - either because of scheduling problems or disputes over ground rules.

"One of the most distressing aspects of these information restrictions is the failure of the Reagan Administration to offer a credible justification for the new policies," said Congressional critic Rep. Glenn English (D-Okla.).

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"This whole business of secrecy has become pervasive," observed Dr. Robert Park, professor of physics and an official of the American Physical Society. "This is obsessive. It's the worst I've ever seen in any administration."

Harold Relyea, a specialist in American government for the Library of Congress, said there are historical precedents for some parts of the Reagan Administration's information policy, but not for its overall sweep.

President Harry Truman's guidelines for classification were as broad as Reagan's, Relyea pointed out, although they have been progressively limited by each succeeding president. And during the early Eisenhower years, the Office of Strategic Information monitored unclassified but sensitive technical information, he said in a telephone interview.

"But taken together," Relyea said, "the Reagan policies constitute an unprecedented effort to clamp down on information."

The most dramatic and highly publicized action by the Administration in this area was the issuing last March of National Security Decision Directive (NSDD) 84.

Under the order, about 112,000 bureaucrats and 15,000 government contractors with access to especially sensitive information are now required, for the rest of their lives, to submit any article, book or speech they write to a review board to determine whether the piece contains sensitive information.

Acting assistant attorney general Richard K. Willard said in an interview that he drafted the order to deal with the ongoing problem of leaks of sensitive information which, he said, is a significant source of danger to the national security.

Asked to characterize the scope of the danger, Willard declined to respond, saying that information is itself classified: "If it's just as easy for the Soviets to read it in the newspapers, they wouldn't even have to send spies to get it."

But John Shattuck, legislative director of the American Civil Liberties Union, contended that, "The directive amounts to a huge and unprecedented censorship system which is at war with the First Amendment - and for which there is virtually no justification."

Commenting on Willard's refusal to describe the problem that prompted the drafting of the directive, Shattuck added: "It's Orwellian in the extreme when the very justification for something that undermines freedom of speech is protected as secret."

Few leaks recently

Agreeing that there has been no marked increase in the number of sensi-

tive leaks over the past few years, Willard confirmed a finding by the Government Accounting Office that there have been only 11 leaks in the past five years serious enough to require administrative action in eight agencies that handle highly classified information. Only two of the leaks would have been covered by NSDD84.

One particularly controversial provision of the order calls for employees who see especially sensitive information to undergo polygraph (lie detector) examinations - both to investigate leaks and on a random, spot-check basis.

Although they have been in use for years, such tests are not accepted as evidence in court. A recent Congressional report found no evidence that polygraph results are valid and concluded that the tests run a risk of mislabeling people as deceptive.

Nevertheless, NSDD84 states that an employee who refuses a polygraph exam may be subject to "adverse consequences." Willard said "adverse consequences" would, in most cases, simply mean denying an employee access to sensitive information.

Asked why the order was necessary when criminal laws already cover leaks of sensitive information, Willard said such cases are difficult to prosecute, since that requires disclosing sensitive information to juries and in public court records.

He denied that an employee's refusal to undergo a lie detector test violates the 5th Amendment to the Constitution, which guarantees the individual's right not to incriminate himself. It does not apply, he said, because an agency investigation is not the same a criminal trial.

Mark Roth, an attorney for the American Federation of Government Employees, challenged that view. In a telephone interview, he said, "Our concern is that innocent people will have their livelihoods on the line based on admittedly unreliable tests. You can be fired if you don't take the test, and you can be fired if you do. It's our reading that it's not constitutional."

Although Willard emphasized that the order covers only a small fraction of employees with access to a minute portion of all classified information, critics point out that it includes high-level officials in policy-making positions.

Charles William Maynes, a former assistant Secretary of State and editor of Foreign Policy magazine, told a Congressional committee that the delay inherent in the censorship process "effectively grants a standing administration critical control over the course of debate on a large number of key public policy issues... Foreign

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Policy has received 34 percent of its articles from former officials" — many of whom would be subject to such censorship."

Willard conceded that the order could have a small delaying effect, but he insisted that the CIA, which must approve such material, clears all manuscripts — including books — in an average of 13 days.

One scientist who has been involved in nuclear weapons work said the mere existence of the order would probably deter researchers from undertaking vital government-sponsored work.

Park, of the American Physical Society, said he conducted an informal poll of a number of senior physicists, many of whom worked on the original Manhattan Project developing the atomic bomb. "The question was whether the requirement to sign a lifetime pre-publication review agreement would have affected their decision to enter government service."

"Without exception, everyone I asked said they would not have entered government service under these conditions," he said in a telephone interview.

Dr. Jonathan Knight of the American Assn. of University Professors, said the censorship threat could be used to harass critics. "If, as Willard claims, there is no need for a vast censorship apparatus, that is proof the order will achieve its aims simply by frightening people," he said.

It is unclear whether the Administration has begun to implement the censorship provision. Willard said nobody has been required to sign Pre-Publication Review agreements. Two senators, Charles Mathias (R-Md) and Thomas Eagleton (D-Mo.), won passage of a bill last fall putting that provision of the directive on hold until mid-April, when hearings on its implications are planned. "It would be against the law for us to require it be signed in view of the Senate's action," Willard said.

But a scientist at a major East Coast defense planning institute said two weeks ago that most people at his institution have already been pressured to sign the pre-publication review provision.

"We were given to understand that we had to sign it or our security clearances would be in jeopardy," he said, requesting that neither his identity nor his employer be identified.

Stressing that he has never been required to sign such agreements in the past, the scientist said, "It's an intimidating order. I'm leery about talking to you right now, even though I'm not telling you anything that's classified — just my opinions."

Broader classification rules

In addition to clamping down on those with access to highly classified material, the Administration has also moved to broaden classification rules so that more information can be stamped secret.

That Executive Order, issued by the President in 1982, reversed a 30-year trend in classification rules which had progressively limited the scope of government-imposed secrecy. Specifically, the order:

- Eliminated a provision barring an agency from classifying information unless it could show that "identifiable harm" to national security would result from its disclosure.
- Dropped a guideline requiring that the danger of disclosure be balanced against the public's right to know.
- Made it easier for agencies to classify previously public material as secret after receiving a Freedom of Information request for the material.
- Allowed agencies to reclassify information that had previously been declassified. Already several authors have been told they cannot use information they gathered from open sources.
- Eliminated a timetable intended to ensure that previously secret information became public (after 6, 20 or 30 years, depending on the material) when it was no longer sensitive. The new guideline allows agencies to keep information classified "as long as required by national security considerations."

A number of historians researching US history in the early 1950s claim their work is being hampered because information which would have become public under the previous time schedule is now secret.

In an interview, Steven Garfinkel, director of the Information Security Oversight Office responsible for overseeing all classification of documents in the government, strongly defended the changes. He said the "identifiable harm" and balancing provisions were dropped on the ground that they were frequently the focus of litigation to force disclosure of information — a focus, he contends, was not intended by drafters of previous classification orders.

Conceding that the classification process may be vulnerable to abuse in some areas, Garfinkel maintained that critics are "reacting to words, not deeds." There has been, he insisted, "no change in the flow of information from the last administration to the current one."

4

A report being prepared for the President will show that the total amount of classification activity is up by a minimal four percent, he said. "Given the world situation last year," he said, "that's a pretty good batting average."

Justification challenged

To critics, a fundamental objection remains: that the Reagan Administration has failed to produce any evidence to justify a whole range of measures restricting the public's access to information.

Testifying before Congress last October, former Undersecretary of State George W. Ball said: "The directive [NSDD84] can be justified only if its proponents produce compelling evidence that such an abridgement of free discourse is absolutely essential. They have not met that burden of proof; I see no evidence they have even tried to do so."

"Our current obsession with the Soviet Union," Ball warned ominously, "should not lead us to imitate the very Soviet methods and attitudes our leaders... deplore."

Next: Suppressing scientific papers

When scientists get aid from US

Following is the second in a three-part series on the efforts of the Reagan Administration to place tighter controls on public access to government information and to some types of scientific communication.

By Ross Gelbspan
Globe Staff

When scientists arrived in San Diego to attend a conference of the Society of Photo-Optical Instrumentation Engineers in mid-September, 1982, many of them were summoned to a room to meet with Department of Defense personnel.

The officers asked two questions: "Was your work sponsored by a DoD agency? Have you secured clearance for your papers?"

That was enough. The scientists withdrew about 150 papers from the conference.

Prof. Hajime Sakai, of UMass-Amherst's Department of Physics and Astronomy, withdrew a non-classified paper he had prepared on measuring atmospheric emissions. He said he objected but felt he had no choice because the research was done under a Defense Department contract.

Today, he is angry over the incident, calling it a government effort to censor scientific exchanges of information.

"We thought that there was no restriction in our contract on publication or presentation of the work, if it has scientific merit," he said in a telephone interview. "The reason we objected is that academic freedom is at stake."

A Pentagon official involved in the affair denied the incident was a "general attack on the scientific community."

"We were just trying to get [Defense Department contractors] to live up to their obligation to clear any work before presentation," said Dr. Stephen D. Bryen, deputy assistant secretary of defense for international trade and security policy.

But Sakai, emphasizing the nonsensitive nature of his work, is not persuaded. Since the San Diego conference, he said, he has been required to send one copy of his work to the Defense Department, which sponsors his work, so that officials there can advise on his use of words.

"It's not strictly censorship," he said, "but most of us know that it is, in a way, censorship. They can only advise us. But if we don't observe that advice, probably they can withhold future grants. They didn't say that explicitly, but that is the implication."

Attempts to stop presentations

On at least nine occasions in the last three years, Defense Department officials have attempted to prevent scientists from publishing or presenting their papers at scientific conferences. They also have denied visa applications to prevent foreign scientists from attending scientific meetings. In virtually all cases, the material in question was not classified.

No one outside the Pentagon is sure how many such interventions there have been, but the American Academy for the Advancement of Science, the leading organization of US scientists, is compiling a list of them.

Concern is growing, meanwhile, that an effort to control the free exchange of scientific information in the name of national security may eventually threaten the very vitality of American science.

The cause of these unpredictable "spasms of control," as one Defense Department publication has called them, is a fear among many in the Reagan Administration that the US is "hemorrhaging technology" to the Soviet Union.

As one result, the Defense Department is underwriting a major effort by the US Customs Service to intercept the export of militarily critical technology.

It also has requested university officials to conduct covert surveillance of foreign visitors and to limit their activities.

And it has sought, through legislation, through proposed changes in the Freedom of Information Act and through expanded use of its power to classify information, to apply new controls to unclassified scientific information with potential military applications. That definition, many scientists claim, could cover almost any scientific development.

Haphazard restrictions

While virtually all scientists concede the need for secrecy in specific areas of research that could provide direct military benefits to the Soviet Union, a growing number express concern about the recent imposition of haphazard restrictions on scientific communications by defense bureaucrats.

In November, Frank Press, president of the National Academy of Sciences, told the House Judiciary Committee: "Perhaps most disquieting from the point of view of individual US scientists is that these [interventions] and other governmental actions to control scientific communication have been largely disjointed, unpredictable and vague in specifying the scientific fields they are intended to cover. The result is that any particular scientist is quite unclear about what obligations and sanctions, if any, might apply to her or his work."

More fundamentally, a number of scientists and university presidents contend that the government has produced no evidence to support its contention that the Soviets are gaining critical military information from open scientific literature.

Dr. Paul E. Gray, Massachusetts Institute of Technology president, has met on the issue frequently with top Defense officials, including Secretary Caspar Weinberger, and said in an interview:

"Not one of the examples I've heard — or heard about — relates to the transfer of technology through the open scientific literature. All the examples are due to theft, espionage or unintentional re-export of high tech items to the USSR."

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by the former deputy director of the CIA, Adm. Bobby Ray Inman, who believes only a small percentage of the "outflow" of technology to the Soviet Union comes from universities.

Similarly, a blue-ribbon panel convened by the National Academy of Sciences found that "in comparison with other channels of technology transfer, open scientific communications involving the research community do not present a material danger from near-term military implications." That report is commonly referred to as the Corson Report, since the panel was headed by former Cornell University President Dale Corson.

Critics also point out that virtually no classified work is done on the campuses of American universities.

New regulations sought

However, Bryen, the Defense official, is less sanguine. "No one really knows how much data the Russians get from the open literature and from scientific exchanges," Bryen said of Inman's assessment. "It's all guess-work."

Bryen represents a faction within the Pentagon that is pushing for further restrictions on the flow of scientific information. He contends that more restrictions are appropriate, given the current US-Soviet tensions. Another group, including a number of Defense employees involved in research and engineering, want a more predictable and less restrictive set of guidelines.

The groups are hammering out a new set of regulations to deal with the problems of technology transfer.

"The Corson Report minimized the damage from technical data. The Soviets operate with great precision," Bryen said in an interview, adding that the Soviets key their efforts to secure information to research developments in the US.

Bryen, who has been responsible for a number of recent Pentagon efforts to have scientific papers withdrawn, said, "We have an uncanny ability to advertise what we're doing. But many scientists are simply not willing to listen. What we need back from the scientific community is some real cooperation."

Many scientists, he feels, either refuse or are unable to understand the severity of the threat posed by the Soviets to US national security.

Some of the scientists just aren't willing to listen to us," he complained. "Some journals make us out to be evil McCarthyites. Instead, what the scientists should be doing is suggesting creative solutions, helping us get the job done."

Pointing out that about 90 percent of defense programs are not classified, Bryen said the military's task is to decide what information

the United States most needs to protect and to decide how to carry out that protection.

One means, he said, involves tightening access to scientific literature.

He held up a copy of Defense Electronics magazine, open to an article on radiation-hardened microchips. Affixed to the magazine was a note from one of Bryen's staff members, asking why the ma-

terial in the article was not classified.

"The problem is that no one is deciding whether it's right or wrong to publish material like this. Smart people ought to sit down and decide whether it's wrong," he said.

"If there's a lot of information on the street, it's easy for the Russians to get it." When asked for examples of Soviet military gains

from Western technology, however, many in the defense establishment point not to the milking of scientific literature but to government-approved sales of nonmilitary technology, which the Soviets have converted to military uses.

In a speech to the Armed Forces Communications and Electronics Assn., for instance, Navy Adm. E.A. Burkhalter Jr., director of the intelligence community staff, cited:

- The use of Kama Trucks, built with American and European production machinery, in the Soviet invasion of Afghanistan.

- The use in Soviet ICBMs of gyros, accelerometers and bearings manufactured in the US.

- The use of two floating dry-docks, built in the West for Soviet civilian use, to repair Soviet aircraft carriers, nuclear submarines and other warships.

Members of the scientific community point out that Soviet acquisition of such material - much of it illegal - has nothing to do with the publication of scientific literature.

The work done at universities

C. Peter Magrath, president of the University of Minnesota, argues that most scientific work done at universities has no immediate applications.

Magrath's view is supported by Dr. F. Karl Willenbrock, chairman of the Technology Transfer committee of the Institute of Electrical and Electronics Engineers, Inc., a society with about 230,000 members worldwide, 190,000 of whom live in the US.

In a telephone interview, Willenbrock pointed out that the level of detail and specificity in most papers delivered at scientific conferences is acceptable to most high-technology companies, which "don't publish technical information which is of benefit to their competitors."

"Science and technology does its best in a free society," he added. "Some people want to shut it down and throw out all foreign students. It's a 'Fortress America' concept, but it is based on serious misapprehensions. The notion that all good science and technology is done in US, for example, is ridiculous."

MIT's Gray and others contend that the greatest casualty of government-imposed secrecy could be the continued development of science within the United States.

Computer scientist Stephen H. Unger, of Columbia University, argued recently, "The free exchange of knowledge among scientists and engineers is a key factor in promoting progress. An integral part of the scientific process is the publication and dissemination of new ideas, discoveries, and experimental results. By this means, critics may detect errors or faulty reasoning, point out possible improvements or confirm the validity of what was done."

"There is no way to block the flow of information to the Soviets without... slowing our own [scientific] progress more than it would slow down [theirs]."

As an example, Gray cited work done in secret on the development of high speed uranium centrifuges by the old Atomic Energy Commission.

"The work progressed very slowly while it was classified," he said. "When it was opened up somewhat to the rest of the scientific community, it turned out that a lot of others had been working on

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some of the problems which had been impeding the progress of the work. A lot of time and money could have been saved by having the process open."

Robert Rosenzweig, of the American Assn. of Universities, in a telephone interview, asked rhetorically: "Why do we produce science that others want to steal?"

"It must have to do with the social system of science we've developed. And that has to do with communication. To risk throwing that advantage away for illusory or short-term protection seems unwise policy."

NEXT: Restrictions on the Freedom of Information Act

After getting information, writers told material had been reclassified

Magazine editor Ellis Rubenstein and authors Stephen Green and Ralph McGehee have encountered head-on a provision in the Reagan Executive Order which permits the government to reclassify as secret information that was previously open.

When Ellis Rubenstein, the editor of Spectrum, a magazine published by the Institute of Electrical and Electronics Engineering, received a free-lance article on the Army's high-technology weapons programs, he sent the manuscript to Gen. John O. Marsh, then Secretary of the Army, to verify a quote attributed to him.

"On April 1, when I returned a call to the Army public affairs office, I was asked whether I had access to a shredder," Rubenstein recalled in an interview. "When I asked why, they informed me the manuscript contained classified information and should be destroyed.

"I asked what information they were referring to. They asked me if I had a secure phone. When I said I didn't, they identified the passages by page locations rather than reading them to me. They turned out to be three phrases in a 39-page manuscript," Rubenstein explained. "When I told them I would check on the point of origin of the information in question, they asked me to lock the manuscript in a safe place and call them as soon as possible."

Rubenstein subsequently told the Army that two of the phrases came from an Army publication "that is routinely made available to members of the press and public" and "the third phrase was taken from testimony by the then-Army Chief of Staff Lt. General Donald R. Keith in public session of Congress."

On April 5, the Army spokesman called Rubenstein and conceded the first two phrases were not, in fact, classified but added, "Lt. General Keith's testimony remains classified and should be deleted from the manuscript."

Rubenstein asked how the Army could classify open testimony in Congress.

"The spokesman explained that sometimes unclassified data, put together into a particular context, provides information, the sum of which is greater than its parts. In such cases, government can reclassify unclassified material," Rubenstein related.

What was especially ironic, in Rubenstein's view, was that two of the phrases the Army wanted deleted were descriptions of Soviet rockets — information that originated in the Soviet Union.

About two years ago, Stephen Green, writing a book on tensions between the US and Israel, requested and received 47 pages of documents from the National Archives.

Several months later, Green received a call from Edwin Thompson, director of Records Declassification at the Archives, asking him to return the 47 pages so they could be copied and recorded.

In a telephone interview, Green, who is based in Montpelier, Vt., said he waited about five weeks for the material to be returned. It was not.

When he enlisted the aid of the American Civil Liberties Union, an Archives official told him the "initial reviewer had failed to identify... items that might not have been declassifiable." Shortly thereafter, the material was returned to Green — with 11 pages withheld and seven other pages substantially deleted.

It was only when the ACLU threatened to sue the Archives on Green's behalf that the material was returned to him. Green said he subsequently learned the Archives had been asked to reclassify the material by the Air Force and the State Dept.

Last March, former CIA agent Ralph W. McGehee published a

book strongly critical of CIA policies that, he claimed, resulted in the transmission of misleading intelligence designed to support the position of US policy-makers.

In an appendix, McGehee described his three-year effort to get his manuscript approved by CIA censors.

One objection of the CIA's Publication Review Board (PRB) involved a section in which McGehee described early training and psychological testing of CIA recruits. When McGehee pointed out that the same information had appeared in books by such pro-CIA authors as William Colby, Ray Cline and Allen Dulles, the censor countered that, "The [review] board said it had made a mistake earlier when it had approved that information."

McGehee replied, "That's tough... It can't reclassify information."

The censor's response, said McGehee, was, "We're operating under a new order," referring to the Reagan order permitting reclassification. McGehee was able to publish the information by pointing out that the Reagan order was at that time still in draft form and had not yet officially taken effect.

In a telephone interview, McGehee said the prepublication review process at the CIA was used almost exclusively to pressure him to delete information that was not sensitive but was embarrassing to the agency.

In November, testifying before a House committee on President Reagan's prepublication review directive, McGehee said:

"From my experiences, I conclude that the CIA, reacting as any bureaucracy, uses prepublication review and spurious claims of national security to prevent the American people from learning of its illegal and embarrassing operations. It attempts to deny to the American people information, essential to... our democratic processes. The CIA's efforts demonstrate what we can expect from other agencies given the same authority under President Reagan's Executive Order."

ROSS GELBSPAN

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ONE CASE OF PAPERS BEING WITHDRAWN

Dr. Stephen D. Bryen, deputy assistant secretary of defense for international trade and security policy, leaned back in his leather chair in his fourth-floor office at the Pentagon.

"Yes, I was involved in having the six papers withdrawn from the International Conference on Permafrost last July."

He pointed to a huge map of the world covering virtually an entire wall of his office.

"Look up there," he said, pointing to the Siberian region of the Soviet Union. "You see that? Did you know that the Russians have serious problems maintaining their military facilities in that area?"

He turned from the map.

"There were several Russians at the conference."

Bryen thumbed through a file on the conference, which was in Fairbanks, Alaska.

"Look at the titles of the papers we had withdrawn: they deal with the maintenance of airfields and roads on permafrost; with pipeline construction; with the performance of off-road vehicles on tundra terrain."

"Can you imagine having Defense Department-sponsored scientists briefing the Russians on how to maintain their airfields in Siberia?"

"Those papers came out of the Army Corps of Engineers' Cold Regions and Engineering Laboratory," he said, adding that the Defense

Department, as a sponsor of the work, had every right to order the papers not be presented at the conference.

Dr. Lloyd Breslau, technical director of the laboratory, prefers to look at the positive side: "The fact that six papers were deemed to be sensitive or classified doesn't detract from the fact that we were able to go ahead with 23 other presentations. I'm delighted that we were able to disseminate that much information."

But other scientists involved in the conference are not persuaded.

"The papers involved no classified information," said Dr. Timothy Hushen, of the National Research Council. "We were never given any official explanation for the papers' withdrawal. The authors were quite distressed."

"It's difficult to say what security issues might have been involved," he concluded.

Said Prof. Robert D. Miller, a soil physicist at Cornell University who was on the committee that selected papers for presentation at the conference: "From what I know of those pa-

pers, the value of them to any potential adversary is quite limited. In fact, I would guess people in USSR have been investigating the same matters for a longer time and in more places than we have."

Miller emphasized in a telephone interview that his judgment is not that of a military person, but he said, "The pertinence of any details to any military security is something someone would have to explain to me. I thought they were quite routine reports."

Miller said he was especially bothered by the chilling effect the suppression of unclassified scientific papers would have on young scientists.

"A civilian lab like the Cold Regions Research Lab has a national and worldwide reputation for scientific excellence," he said. "This is because it has always provided a situation in which genuine scientists work on problems with a genuine scientific approach, and with the expectation of being able to publish their findings — insofar as they are not on classified matters."

Now, in light of what happened at the Permafrost Conference, Miller added, "I, myself, would hesitate to suggest to a young scientist that he join a Defense Department lab" because of the fear that "arbitrary decisions may be made . . . the feeling that there might be capricious or irrelevant reasons for denying publication of something that had scientific merit and negligible security implications."

"That would be a chilling prospect for a young scientist and would damage the nation's Defense establishment in long run because of the prospect of losing the ability to attract the high quality staff they've always been able to attract."

- ROSS GELBSPAN

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In Defense of Public Privacy in U.S.

By DAVID BURHAM
Special to The New York Times

WASHINGTON, Jan. 20 — From a one-room office on the second floor of the carriage house behind his Capitol Hill home, Robert Ellis Smith, a 43-year-old lawyer and former newspaper reporter, sounds the alarm about maintaining freedom and privacy in the computer age.

Now entering his 10th year as the owner, publisher and principal reporter of Privacy Journal, a monthly newsletter that charts the impact of technology on the rights of the American people, Mr. Smith, a kind of one-man lobby, worries that today, as much as ever, the nation is threatened by the widespread intrusions described in "Nineteen Eighty-Four," George Orwell's novel.

"We haven't reached the Orwellian nightmare yet, in part because the Government is somewhat inefficient," he said recently. "But what we are allowing the computers to do to our society is still quite upsetting. We seem to feel that the computers have so much information about us that we shouldn't take any risks, that we should be compliant people."

Mr. Smith says public interest in privacy issues reached a peak in the period 1975 to 1977, when abuses of Government power were uncovered in the Congressional investigations of the Watergate scandals and activities of the Central Intelligence Agency, resulting in the creation of the Privacy Protection Study Commission, which issued a national report in 1977. "But with 1984 here," he added, "issues raised in George Orwell's novel seem to have revived a good deal of interest about where our society really is headed."

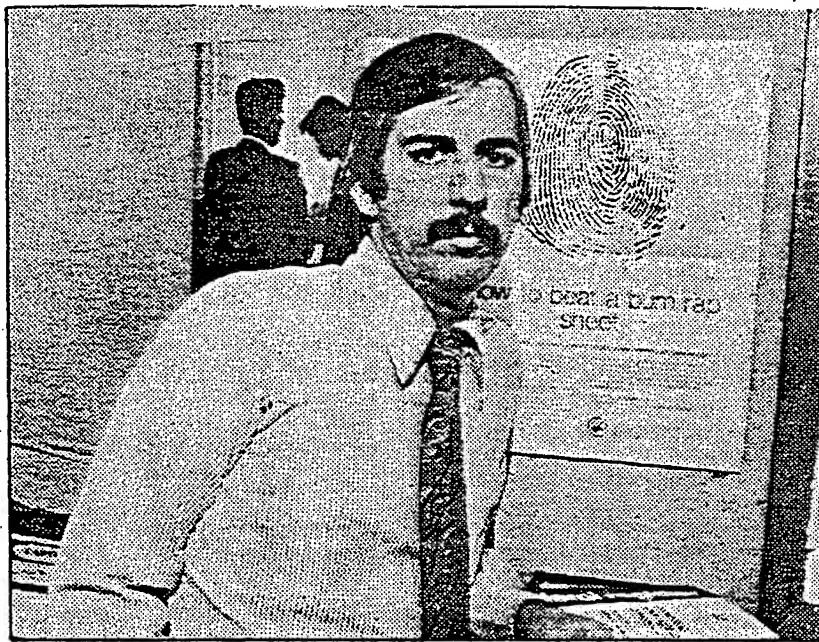
Regulations About Privacy

Because the great Federal agencies such as the Internal Revenue Service, the Federal Bureau of Investigation and the National Security Agency have headquarters here, Washington is the fountain of regulations affecting individual privacy and thus the natural base for Mr. Smith.

Congress frequently holds hearings about privacy abuses concerning both the Government and private industry and periodically passes legislation dealing with privacy, such as the Privacy Act, a law that gives Americans certain information rights, including the power to see and correct records held about them by Federal agencies.

The Congressional Record, court decisions and obscure regulations published in the Federal Register are the raw materials of Mr. Smith's newsletter. Occasionally a Congressional hearing will lure him out of his office. Often he gets tips from officials who share his concerns.

"Since my first days as a reporter,



The New York Times / George Tames

Robert Ellis Smith, owner and publisher of the Privacy Journal.

the struggle of the individual against the institution always has been one of my central interests," Mr. Smith said of his work. On one wall of his spacious, sunny office, situated just seven blocks from the Capitol, bookshelves bulge with reports and studies and other volumes touching on the hundreds of different issues that concern him. A small cast-iron stove and a stack of wood take up a good portion of another wall.

'Pernicious Technology'

One bit of noncomputer technology that Mr. Smith has devoted many articles to in his neatly printed newsletter is the polygraph, or lie detector, a device designed to measure the stress felt by a subject when he is asked a series of questions. The polygraph is now routinely used within the C.I.A. and the National Security Agency to try to anticipate security problems.

Last year the Reagan Administration issued a directive vastly expanding the use of the polygraph for investigating the unauthorized disclosures of sensitive information, but Congress recently approved legislation postponing these procedures until this spring.

"Government and business use this pernicious technology in a way to convince people that machines can do something that people cannot, that machines can get into someone's brain," Mr. Smith said. "I agree with those who describe polygraphs as 20th-century witchcraft, a modern version of the Medieval world's trial by fire."

Mr. Smith is critical of how Government has responded to the challenge of the new technology. "The Supreme Court under Chief Justice Warren Burger has taken a restrictive view about privacy rights," he observed. "If the invasion did not occur in the marital bedroom, the Court seems to feel there has been no invasion at all. Also, most of the Federal courts have been slow to recognize that the new computer technologies can elevate an action which once was not important to an action that poses significant constitutional questions."

Mr. Smith believes, however, that one of the fundamental problems may lie in the Constitution itself. "The Constitution imposes no restriction on the actions of private corporations, only on Government agencies," he said. "The Founding Fathers established a system of checks and balances for the Government. For most people, being searched by the police is a remote possibility. But being subjected to physical searches by your employer or computerized searches by insurance companies and credit-reporting companies is quite likely."

Mr. Smith charges \$89 a year for his newsletter, which now has a monthly circulation of about 1,500, down from a peak of 2,000 in the post-Watergate years in the mid-1970's. He said there had been a recent surge in sales.

"I don't see any signs that the trend toward more and more control of the individual is being retarded," he said, "but I'm not going to stop trying."